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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/697,067      | 10/30/2003  | William Anthony Harper |                     | 8135             |

7590 03/31/2005  
William Harper  
PMB 140  
16541 Redmond Way  
Redmond, WA 98052-4482

EXAMINER

GEHMAN, BRYON P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3728

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                         |  |
|------------------------------|------------------------|-------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>     |  |
|                              | 10/697,067             | HARPER, WILLIAM ANTHONY |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>         |  |
|                              | Bryon P. Gehman        | 3728                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-57 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/30/03</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-27, 45-47, 49-50, 52 and 55-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4, "said fluid" is inconsistent with "fluid product", as "fluid" is an adjective, not a noun. See also claims 5, 10, 13, 17 and 55.

In claims 2-6, 9-19, 21-22 and 25-27, the preamble limits the claim to "The packet", while claim 1 recites a product comprising a packet, fluid product and insert. A dependent claim must further limit its parent claim, so dependent claims must be directed to --The product--, no merely the "packet". Similarly, claims 7-8 and 34-35 are improperly limited to "The sidewall areas", claims 20 and 46 improperly limited to "The laser and toner means" and claims 23-24 and 49-50 to "The insert".

In claim 9, lines 2-3, "said designated area and said transparent sidewall" each lack antecedent basis for one of each.

In claims 19 and 45, line 1 of each, "laser and toner means" is an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

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In claims 20 and 46, "said toner component" lacks antecedent basis.

In claims 21 and 47, "said meaningful communication placed on opposite sides" lacks antecedent basis.

In claim 22, line 2, "the confine" lacks antecedent basis.

In claim 24, line 2, "the transparent said pieces" lacks antecedent basis.

In claim 26, line 1, "potion" is a misspelling. In line 2, "on opposite surface" is ungrammatical and lacks antecedent combination with "said meaningful communication.

In claim 47, line 1, "translucent of opaque" does not make sense.

In claim 50, line 2, "the transparent said pieces" lack antecedent basis.

In claim 55, line 8, "from available said packet" lacks antecedent basis or does not make sense, and "said user" lacks antecedent basis.

In claim 56, line 4, "said liquid" is inconsistent with the previous "liquid product". In line 6, "said useful fluid product" lacks antecedent basis.

In claim 57, line 4, "said liquid" is inconsistent with the previous "liquid product".

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 4-6, 10, 13, 15, 17-28, 31-33, 36, 39, 41 and 43-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (713,606) in view of one of Salfisberg (2,298,421) and Paley et al. (5,814,959). Cole discloses a container (2) with a transparent sidewall, a quantity of useful liquid product sealed in the container and an insert (1) bearing meaningful communication enclosed within the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Cole employing an alternative container such as a transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Cole, as the possible content variation is virtually limitless.

As to claims 22-24 and 48-50, to provide multiple inserts would comprise obvious duplication, not involving any new and unexpected result.

As to claims 25-26 and 51-52, to fold a portion of the insert to obscure the communication would have been obvious to render the communication unobtainable until removed from the packet.

As to claims 55-57, the method of use would flow naturally from the intended use disclosed.

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5. Claims 1, 4-6, 10, 13, 15, 17-28, 31-33, 36, 39, 41 and 43-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cadwell (956,937) in view of one of Salfisberg and Paley et al. ('159). Cadwell discloses a container (A) with a transparent sidewall, a quantity of useful liquid product sealed in the container and an insert (D) bearing meaningful communication enclosed within the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Cadwell employing an alternative container such as a transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Cadwell, as the possible content variation is virtually limitless.

As to claims 22-24 and 48-50, to provide multiple inserts would comprise obvious duplication, not involving any new and unexpected result.

As to claims 25-26 and 51-52, to fold a portion of the insert to obscure the communication would have been obvious to render the communication unobtainable until removed from the packet.

6. Claims 1, 4-6, 9-10, 14-16, 19-21, 25-28, 31-33, 35-36, 40-47 and 51-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salfisberg (2,572,056) in

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view of one of Salfisberg ('421) and Paley et al. ('159). Salfisberg ('056) discloses a container with a transparent sidewall, a quantity of useful fluid product (column 2, lines 27-36) sealed in the container and an insert (6 bearing meaningful communication enclosed within the container on the sidewall of the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Salfisberg ('056) employing an alternative container such as a transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Salfisberg ('056), as the possible content variation is virtually limitless.

7. Claims 2-3, 11-12, 29-30 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 28 above, and further in view of Hoynack (3,598,609). Hoynack discloses a transparent packet constructed of food grade polymer film (polyethylene). To modify the previous combinations employing a particular material for the packet would fail to distinguish any new and unexpected result over the disclosure of Hoynack, as polyethylene was well known to provide a transparent packaging for fluid contents.

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8. Claims 7-8 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 6 and 33 above, and further in view of Farmer (2,093,976). Farmer discloses a surface treated to be opaque. To employ an opaqueness to the packet of the combinations above would have been obvious in order to promote viewing of contents against the opaque surface.

9. This application contains claims directed to the following patentably distinct species of the claimed invention: I) Figure 1; II) Figure 2; III) Figure 3; IV) Figure 4; V) Figure 5; VI) Figure 6 and VII) Figure 7.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no allowable claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).



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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Disclosed are transparent packets.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent.

Bryon P. Gehman  
Primary Examiner  
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BPG